



**SO ORDERED.**

**SIGNED this 26 day of  
September, 2014.**

*Stephani W. Humrickhouse*

**Stephani W. Humrickhouse  
United States Bankruptcy Judge**

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**CASE NO. 09-10340-8-SWH**

**NEW BERN RIVERFRONT DEVELOPMENT,  
LLC,  
DEBTOR**

**NEW BERN RIVERFRONT DEVELOPMENT,  
LLC,  
Plaintiff,**

**ADVERSARY PROCEEDING NO.**

**10-00023-8-AP**

**v.**

**WEAVER COOKE CONSTRUCTION, LLC;  
TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA; J. DAVIS  
ARCHITECTS, PLLC; FLUHRER REED PA;  
and NATIONAL ERECTORS REBAR, INC. f/k/a  
NATIONAL REINFORCING SYSTEMS, INC.,  
Defendants,**

**and**

**WEAVER COOKE CONSTRUCTION, LLC;  
and TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA,  
Defendants, Counterclaimants,  
Crossclaimants and Third-Party Plaintiffs,**

**v.**

**J. DAVIS ARCHITECTS, PLLC, FLUHRER  
REED PA, SKYSAIL OWNERS ASSOCIATION,  
INC.; NATIONAL REINFORCING SYSTEMS,  
INC., ROBERT P. ARMSTRONG, JR., ROBERT  
ARMSTRONG, JR., INC., SUMMIT DESIGN  
GROUP, INC., CAROLINA CUSTOM  
MOULDING, INC., CURENTON CONCRETE  
WORKS, INC., WILLIAM H. DAIL d/b/a  
DD COMPANY, EAST CAROLINA MASONRY,  
INC., GOURAS, INC., HAMLIN ROOFING  
SERVICES, INC., HUMPHREY  
HEATING & AIR CONDITIONING, INC.;  
PERFORMANCE FIRE PROTECTION, LLC;  
RANDOLPH STAIR AND RAIL COMPANY;  
STOCK BUILDING SUPPLY, LLC; PLF OF  
SANFORD, INC. f/d/b/a LEE WINDOW &  
DOOR COMPANY; UNITED FORMING,  
INC. a/d/b/a UNITED CONCRETE, INC.;  
JOHNSON'S MODERN ELECTRIC  
COMPANY, INC.; and WATERPROOFING  
SPECIALITIES, INC.,**

**Crossclaimants, Counterclaimants and  
Third-Party Defendants.**

**and**

**NATIONAL ERECTORS REBAR, INC.**

**Defendant, Counterclaimant,  
Crossclaimant and Third-Party  
Plaintiff,**

**v.**

**ROBERT P. ARMSTRONG, JR., ROBERT  
ARMSTRONG, JR., INC., SUMMIT DESIGN  
GROUP, INC., JMW CONCRETE  
CONTRACTORS, and JOHNSON'S MODERN  
ELECTRIC COMPANY, INC.**

**Third-Party Defendants.**

**and**

**J. DAVIS ARCHITECTS, PLLC,  
Third-Party Plaintiff,**

**v.**

**MCKIM & CREED, P.A.,  
Third-Party Defendant.**

**and**

**GOURAS, INC.,  
Third-Party Defendant and  
Fourth-Party Plaintiff,**

**v.**

**RAFAEL HERNANDEZ, JR., CARLOS  
CHAVEZ d/b/a CHAVEZ DRYWALL,  
5 BOYS, INC. and ALEX GARCIA  
d/b/a/ JC 5,  
Fourth-Party Defendants.**

**and**

**STOCK BUILDING SUPPLY, LLC,  
Third-Party Defendant and  
Fourth-Party Plaintiff,**

**v.**

**CARLOS O. GARCIA, d/b/a/ C.N.N.C.,  
Fourth-Party Defendant.**

**ORDER ALLOWING CARLOS O. GARCIA'S  
MOTION FOR SUMMARY JUDGMENT**

Pending before the court is the motion for summary judgment filed by fourth-party defendant Carlos O. Garcia, d/b/a C.N.N.C. against Stock Building Supply, LLC ("Stock"), in its capacity as fourth-party plaintiff. The court previously entered orders allowing the motion for summary judgment filed by Stock, in its capacity as a third-party defendant, against third-party Weaver Cooke

Construction, LLC (“Weaver Cooke”), with respect to all claims asserted by Weaver Cooke against Stock.<sup>1</sup>

Each of the three claims asserted against Garcia in the third-party complaint – for equitable indemnity/contribution, for contractual indemnity, and for negligence – is derivative in nature and premised on a finding that Stock Supply is liable to Weaver Cooke. Because there are no remaining claims asserted by Weaver Cooke against Stock Supply, there is no presently viable basis for the claims set out in the fourth-party complaint against Garcia.<sup>2</sup>

On that ground, Garcia’s motion for summary judgment is **ALLOWED**, subject to reconsideration, if necessitated by appeal.

**SO ORDERED.**

**END OF DOCUMENT**

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<sup>1</sup> An order granting Stock Supply summary judgment on Weaver Cooke’s claims of negligence and breach of warranty was entered on June 10, 2014. An order granting Stock Supply summary judgment on Weaver Cooke’s remaining claim of indemnity was entered on August 22, 2014.

<sup>2</sup> Weaver Cooke has appealed both orders granting summary judgment to Stock Supply, and the court will address the content of Garcia’s motion if the ultimate disposition of that appeal so requires.